

BANKRUPTCY



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IS BANKRUPTCY REALLY MY ONLY OPTION?

Bankruptcy should only be considered as a last resort. It is very difficult to obtain credit once you have filed for bankruptcy. It is generally better to work with your creditors to avoid bankruptcy rather than filing for bankruptcy. Another alternative to bankruptcy to consult with a consumer credit counseling service which will assist you in finding a way to pay your debts and will help negotiate with your creditors. This is a non-profit service that charges a modest fee to assist you.

In addition, bankruptcy is not free. The court charges a filing fee (about \$300 in Nebraska), and your attorney will charge for his or her services. The attorney will require advance payment. Otherwise, he or she becomes a creditor as well.

WILL BANKRUPTCY AFFECT MY MILITARY CAREER?

The Air Force should not discipline you merely because you filed for bankruptcy. However, if the reason that you are filing is due to "financial irresponsibility," then you may be subject to discipline for being financially irresponsible under Air Force Instruction (AFI) 36-2906. Furthermore, filing for bankruptcy could impact your security clearance, or could affect your ability to obtain one.

WHAT TYPES OF BANKRUPTCY PROCEEDINGS ARE AVAILABLE TO ME?
"Chapter 7" and "Chapter 13" are the two bankruptcy proceeding available for individual consumers. What are the main differences between the two types of bankruptcy procedures?

| Chapter 7 | Chapter 13 |
|----------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------|
| Court discharges most, if not all, of your debts ¹ | Court sets up a debt repayment plan |
| Court sells your property to pay off the debts ² | You keep your property |
| You may transfer a Ch. 7 case to Ch.13 or other chapter under Title 11, U.S. Bankruptcy Code | Cannot file under Ch. 13, if you failed to appear or voluntarily dismissed a prior bankruptcy petition |

You should consult an attorney who specializes in bankruptcy for which type of proceeding you should file for.

WHAT IS THE FILING PROCESS?

Filing for bankruptcy is a federal proceeding. Nebraska has two federal bankruptcy courts, located in Omaha and Lincoln. The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) requires filers to get credit counseling from a government approved organization before they file, and debtor education after completion of the bankruptcy proceedings (with limited exceptions).

After filing, the bankruptcy court will have control over the proceedings regardless of where the member's property or creditors are physically located. A trustee will be assigned to your case and manage the pre-court proceedings before a federal bankruptcy judge decides your case.

Once a bankruptcy petition is filed, an automatic "stay" takes effect and protects the debtor

¹ Alimony, child support, taxes, federal student loans, debts incurred from committing a crime and debts not listed in the bankruptcy proceeding are not discharged.

² You may be able to keep some household items. Nebraska law and federal law exempt some personal goods from being sold.

and his property from certain creditors' actions. This means that with regard to all debts covered by the bankruptcy, creditors may not take any action to collect payment nor repossess any property which is collateral for a debt.

CONCLUSION

If you have no other alternative to filing for bankruptcy, you should consult a civilian attorney who is competent in bankruptcy proceedings. Legal Assistance attorneys can give you general advice but cannot represent you in court or prepare any court documents for you. If you would like more information, you can access the Federal Judiciary website at <http://www.uscourts.gov/bankruptcycourts/bankruptcybasics.html> and the United States Bankruptcy Court for the District of Nebraska publishes an online information packet you can access at <http://www.neb.uscourts.gov/pdf/prose.pdf>. Additional resources are listed below.

The information in this handout is general in nature and is subject to changes. It is not to be used as a substitute for legal advice from an attorney regarding individual situations.

Resources:

- 11 U.S.C. §101, et seq.
- Pub. L. No. 109-8, 119 STAT. 23, BAPCPA
- AFI 36-2906, *Personal Financial Responsibility*, dated 1 January 1998.
- <http://www.consumer.ftc.gov/articles/0224-filing-bankruptcy-what-know>
- <https://www.neb.uscourts.gov/>
- <http://www.uscourts.gov/FederalCourts/Bankruptcy/BankruptcyBasics.aspx>